

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
CITY COUNCIL CHAMBERS
September 9, 2008**

1. Present

Commissioners:

Sherwood Bishop, Chair
Bill De Soto
Ryan Thomason
Bill Taylor
Curtis Seebeck
Randy Bryan (left at 8:00)
Allen Shy

City Staff:

Cecil Pennington, Interim Director of Planning
Chance Sparks, Chief Planner
John Foreman, Sr. Planning Tech.
Francis Serna, Recording Secretary

Others Present: Tony Spano, John Newby, Claudia Kotin, Adam Johnson, Will Parrish, Shawn T. Ash, Brad Martin, Howard Tidwell, Barbara Tidwell, Richard E. Kinsey, Brian Montgomery, Ronnie Vasquez, Fred A. Terry, Cody Clarke, John Foster, Nanci Lancaster, William Ouellette, Charlene Epps, Perry Bigelow, Nancylee Seifert, Frank Pamott, Leah Laszewski, Cecil Pounds, Caroline Schwartz, Brandon Easterling, Mathew T. Miller, Oce Vest, Johnathon Acord, Fr. Jonathan Niehaus, Dennis Dunn, Greg Gibson, Ariel Chavela, Elizabeth Good, J. Mike Grossman, Mark Hart, Ginny Shewmake, Mike Dallas, Melissa Matthiessen, Alastar Jenkin, John M. Kelly, Patty Eyman, Sandra Stell, Jack Stell, Laura J. Stroup, Ed Theriot, and R.D. Burton.

2. Call to Order and Announce a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Bishop at 6:05 p.m. on Tuesday, September 9, 2008 in the Council Chambers of the City of San Marcos City Hall, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Bishop welcomed the audience and the television viewers.

4. Executive Session

There were no discussions.

5. Citizen Comment Period

Phillip Muzzy, on behalf of JP Concepts representing Waterdogs Sports Lounge, stated he has requested a renewal TABC CUP and asked for the Commission's support.

Johnathon Acord also on behalf of JP Concepts stated he was with Mr. Muzzy and decided not to speak.

6. Reconsider and take action, for the purpose of a record vote, prior action on textual amendments to Section 1.2.1.3(e) Limitations on Authority and Creation of Section 1.4.1.1 et. Seq. Authorizing Waiver or Modification of Development Standards as an Economic Development Incentive.

Cecil Pennington recapped the August 26, 2008 Planning Commission Meeting and gave a brief overview of textual amendments. He explained that the Legal Department advised staff that a record vote was required therefore staff was advised to post the item on the agenda.

The Commission briefly discussed the amendments.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to recommend to City Council the textual amendments to Section 1.2.1.3(e) Limitations on Authority and Creation of Section 1.4.1.1 et.seq. Authorizing Waiver or Modification of Development Standards as an Economic Development Incentive.

7. CUP-08-27. Hold a public hearing and consider a request by JP Concepts Inc., for renewal of a TABC Conditional Use Permit to allow the on-premise consumption of mixed beverages, beer, and wine for Waterdogs Sports Lounge, an establishment located at 217 E. Hopkins.

John Foreman advised that Waterdogs Sports Lounge opened for business in 2007 and that a Conditional Use Permit was approved on August 28, 2007 to allow liquor, beer and wine consumption. The establishment meets the parking requirements and there have been no substantial changes to the business. He commented that two minor disturbances were reported by the Police Department but no penalty points were assessed. Staff recommended approval of the request for 3 years, provided standards are met, subject to the point system.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to approve the request for 3 years, provided standards are met, subject to the point system. The motion carried unanimously.

8. CUP-08-28. Hold a public hearing and consider a request by Brian Montgomery, for renewal of a TABC Conditional Use Permit to allow the on-premise consumption of mixed beverages, beer, and wine for The Wine Cellar, an establishment located at 202 N. LBJ.

Cecil Pennington pointed out that there was an updated staff report and memo in their reading files.

John Foreman stated that the business opened in 2007 and that a Conditional Use Permit was approved on June 26, 2007 to allow liquor, beer and wine consumption. He added that no reports have been submitted by other departments. Mr. Foreman pointed out that because the permit is a Restricted Conditional Use Permit; quarterly reports are required to be submitted showing that alcohol sales make up less than 50% of gross receipts. At this time, no reports have been submitted. He stated that the applicant advised staff that he was unaware of the requirement for quarterly reports. Staff recommended that the request be approved for 30 days to allow the applicant time to submit the reports, if the request is fulfilled, the CUP will be granted for three years.

Chair Bishop opened the public hearing. There were no public comments, and the public hearing was closed.

Commissioner Thomason stated that he felt that the applicant was not required to submit reports being that the business is a package store.

John Foreman advised the Commission that due to the on premise consumption, the applicant is required to submit quarterly reports. He added that the applicant has not indicated that he has an issue with submitting the required reports.

Cecil Pennington commented that the applicant can meet with staff and address any concerns.

Commissioner Thomason asked the applicant, Brian Montgomery, if there would be a problem submitting the reports.

Brian Montgomery, 202 N. LBJ, #101, stated that he was not sure if providing the reports would be a problem. He mentioned that he was not aware that he was required to submit quarterly reports. Mr. Montgomery requested that the request be approved for 3 years subject to the reports being submitted to staff.

Commissioner Seebeck suggested that the applicant not be required to submit reports.

Cecil Pennington explained that the City Code would have to be amended to eliminate the required to submit quarterly reports.

Commissioner Shy suggested that the applicant receive more time, approximately six months, so that he could submit accurate reports.

It was noted that the reports would reflect current sales and not former sales.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Shy, the Commission voted seven (7) for and none (0) opposed, to approve the request for thirty (30) days to give the applicant time to resolve the quarterly report issue. The motion carried unanimously.

9. CUP-08-29. Hold a public hearing and consider a request by Tim McMahon, for a Conditional Use Permit to allow the use of metal as a façade material for Capital Kia South, a new car dealership located at 2410 S. IH 35.

John Foreman gave a brief overview of the staff report explaining the material that would be used on the building. He pointed out that according to the site layout and proposed landscaping parts of the building would be visible from Barnes Drive and partially visible from IH-35. Staff recommended approval to allow a metal façade at the proposed Kia dealership at 2410 IH 35 South with the condition that the applicant provide dense vegetation to screen the sides and rear of the structure from Barnes Dr.

Chair Bishop opened the public hearing. There were no public comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Seebeck, the Commission voted seven (7) for and none (0) opposed, to approve the request to allow metal façade at the proposed Kia dealership at 2410 IH 35 South with the condition that the applicant provide dense vegetation to screen the sides and rear of the structure from Barnes Drive. The motion carried unanimously.

10. PDD-07—02. Consider a request by David Denison representing SLF II McCarty Lane, LLP for a Planned Development Overlay Zoning District (PDD) for 259.52 acres, recommended for General Commercial (GC), Community Commercial (CC) and Public zoning (P), located at the intersection of McCarty Lane and IH 35 South.

Cecil Pennington advised the Commission that updated material was included in their reading files. He pointed out that the correct acreage was indicated on the new report submitted by the applicant on September 9, 2008. Mr. Pennington recapped the August 26, 2008 Planning Commission meeting. He pointed out that the applicant has submitted a Meets and Bounds Survey of the subareas. Staff recommended approval of the PDD subject to the developer provide dedication of ROW for McCarty and SH 21 extension to be constructed as the later phases of this project is platted as per the PDD and Development approval of the Recreational Easement Document prior to Council consideration. He added that the applicant, Oce Vest, was available for comments.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to approve the PDD subject to the developer provide dedication of ROW for McCarty and SH 21 extension to be construct as the later phases of this project is platted as per the PDD and Development and approval of the Recreational Easement Document prior to Council consideration. The motion carried unanimously.

11. PDD-08-01 Continue the public hearing and consider a request by Darren Casey representing Bobcat Investors, Ltd and W.C. Carson of Carson Properties for a Planned Development Overlay Zoning District (PDD) for 1.46 acres zoned General Commercial (GC), located between LBJ Drive and Guadalupe Street and fronting onto Concho Street.

Chair Bishop announced that order of presentations.

Cecil Pennington mentioned that a parking analysis comparison of ULI, COSM and the applicant was included in their reading files for review. Mr. Pennington gave a brief overview of the staff report and pointed out the areas of concern regarding impervious cover and parking. He stated that the proposed project is a good project although requirements would be difficult to achieve. Staff reluctantly recommended denial of the request.

Ed Theriot, of Mitchell Planning Group, gave a ten minute presentation. He mentioned that the parking analysis calculation were slightly different than what they has proposed. Mr. Theriot reiterated that they are not requesting a variance to the PDD but a relaxation of the requirements. He introduced Greg Gibson, representing Bobcat Investors and Ariel Chavela, Architect for the project. Mr. Theriot stated that they would be available for questions.

Chair Bishop opened the public hearing.

Kyle Maysel, Chair of the Downtown Parking Advisory Board, Secretary of the Downtown Association and is also involved in the Main Street Board. He stated that everyone wants the project but is in opposition to the proposal due to the lack of parking. Mr. Maysel pointed out that other business should not be hurt due to the lack of parking by the proposed project. He provided the Commission with an article in the Austin American Statesman dated September 9, 2008 reporting that a project in downtown Austin would be built with sufficient parking. Mr. Maysel said that the applicant should be required to meet the parking requirements.

Larry Rasco, Vice-President of Downtown Association, former President of Downtown Association and Attorney in the downtown area. He felt that relaxation in the parking requirements would cause problems for other business in the area. Mr. Rasco stated that the applicant has not made a good faith effort and stated that the applicant should meet the parking requirements.

Cecil Pennington pointed out the error in the land use chart submitted by the applicant.

Ed Theriot stated they were aware of the errors and had them corrected.

There were no additional comments and the public hearing was closed.

Commissioner Thomason pointed out that in his experience the parking lots in the Colloquium, Nelson Center and Jack in the Box were never more than 50% full.

Kyle Maysel stated that there is an issue with parking north of the square and that parking issues do not affect south of the square. He stated that the applicant should be required to meet the minimum parking requirements.

Commissioner DeSoto asked Mr. Theriot if a residential development would meet the parking requirements.

Ed Theriot explained that an eight story building with two retail and six residential levels is permitted but that they are attempting a smaller scale development.

Commissioner Seebeck pointed out that the Hotel Conference Center was approved without meeting the parking requirements. Therefore, he felt that this project should be approved.

Commissioner Taylor commented that he was in general support of the project but hoped that the parking issue could be resolved. He had some concern regarding the bio swells.

Commissioner Shy stated that he was the previous President of the Downtown Association and in his opinion there is a parking problem in the downtown area. He pointed out that businesses in the downtown area could not stay open for business without pedestrian traffic. Commissioner Shy stated that he agreed with Mr. Maysel regarding other business should not be affected by the parking reduction of the proposed project.

Chair Bishop stated that the request is a good project, although there is a serious parking problem downtown. He said that he supports the staff's recommendation.

Commissioner Bryan stated that he is aware of the concerns by citizens in the downtown area. He pointed out that urban development is a reality of the future and suggested that the City develop a parking area in the downtown area. Commissioner Bryan stated he was in general support of the project.

Commissioner DeSoto stated that he could not support the project at this time. He had concerns regarding the bio swales and parking issues.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Seebeck, the Commission voted five (5) for and two (2) opposed, to approve the request. The motion carried.

12. PDD-08-02. Continue the public hearing and consider a request by South Stagecoach Business Park, LTD (Savannah Club Cottages) for a Planned Development District Overlay (PDD) for property located in the 200 and 300 Block of South Stagecoach Trail.

Cecil Pennington advised the Commission that the applicant, Sada Jacobs, has requested that the PDD request be postponed.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted seven (7) for and none (0) opposed, to continue the public hearing and postpone the request for one month. The motion carried unanimously.

13. PDD-08-03. Hold a public hearing and discuss a request by Brandon Easterling and JBE & Associates for a planned development district overlay on existing MF-24 base zoning for the property located at 401 Fredericksburg, 210-212 Pat Garrison, 408 Comanche and 418 Comanche.

Chair Bishop pointed out that the item would be scheduled for action on September 23, 2008.

Chance Sparks advised the Commission that two letters were received; one in opposition to due parking and one was a neutral comment regarding status of current tenants. Mr. Sparks gave a brief overview of the staff report. He pointed out that the project is a superior development and consistent with the goals of the Downtown Master Plan. He pointed out that there are few details that need to be worked out with the applicant but did not identify any major problems. Mr. Sparks advised the Commission that the applicant will meet with staff to discuss Commissioner's comments. Staff has asked the applicant to do further work to address alternative right-of-way designs, off-street parking mitigation, bulk and massing of the project and impervious cover. He added that the new submittal and report will be brought back to the Commission at the September 23, 2008 meeting.

Melissa Mathiessen of Bury and Partners, 221 W. Sixth St. Austin, Texas gave a ten minute presentation.

Commissioner Seebeck inquired if LEED would be used.

Melissa Mathiessen stated that they are pursuing using LEED certification and that they currently have someone working on an analysis.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

Commissioner Thomason commented that decomposed granite should not be used for the sidewalks.

Commissioner DeSoto said that it is exciting that The Vintage is going to be a LEED certified project. However, he expressed concerns regarding impervious cover.

Chair Bishop advised that he had several comments and that he would provide them to staff. He pointed out that his concerns relate to right-of-way, the design of the building and that the massing would create a wall between the City and the University, as well as concerns with setbacks and the shortage of parking.

Cecil Pennington advised the Commission that any written comments would be provided to the applicant. There was no further discussion.

14. ZC-08-09. Continue the public hearing and consider a request by Bigelow Homes San Marcos Development, LLC for a zoning change from Single Family (SF-4.5) to Town Home (TH) with a density equal to Multi-Family (MF-24) for the property located in Block E, Lots 1-6, Block F, Lots 6-12, and Block H, Lots 1-16 of Blanco River Village.

Cecil Pennington advised the Commission that the applicant provided updated information that has been included in their reading files. In addition, letters have been received and a map has been created for their review. Mr. Pennington pointed out that 15 submittals are in support and 12 are in opposition to the request. He gave an overview of zoning change request and the submitted proposal. Staff recommended adoption of the base zoning, conditioned on the approval of safeguards and design standards proposed in the PDD that would assure compatibility of the living court with the surrounding SF-4.5 lots.

Perry Bigelow gave a ten minute presentation. He pointed out that issues raised have been addressed. Mr. Bigelow stated that his attorney was available to answer questions or concerns.

Chair Bishop opened the public hearing.

Laura J. Stroup, Assistant Professor at Texas State University and resident of 426 Hart Ridge, spoke in support of Blanco River Village. She pointed out that there is not an abundance of homes in the downtown area.

Jack Stell, 202 Rush Haven, stated he had been opposed to the rezoning of Blanco River Village and is changing his opinion and is now in support of the request. He pointed out that he had concerns of the parking lot being built over the high pressure water main and if traffic calming devices were installed that the Home Owner's Association not be responsible to maintain them.

Cecil Pennington advised Mr. Stell that the city will maintain the traffic calm devices.

Nancy Lee Seibert, 105 Dashwood, stated that they have carefully read the letter from Mr. Bigelow and complimented him on the specifics of the proposed development. Ms. Seibert spoke in support of the request and felt that most of the neighbors were also in support.

Patty Eyman, 206 Rush Haven, stated she feels cheated for buying into a neighborhood that was designed and compatible for what she purchased. She felt Mr. Bigelow was planning to sell home at a lower cost. Ms. Eyman pointed out that traffic will be an issue and was concerned that a parking lot would be built on a high pressure water main. She said that the Neighborhood Association would have to deal with future issues. She spoke in opposition to the request.

There were no additional citizen comments and the public hearing was closed.

Commissioner Shy inquired if developing a parking lot over the water main was a valid concern.

Cecil Pennington explained the location of the water line and added that the parking lot would be used as a guest parking and not a full time parking area.

Commissioner Seebeck asked if the water line was built to certain standards.

Cecil Pennington advised that water lines are built to one standard.

Commissioner Thomason pointed out that there are several parking areas that are built over water lines. He commented that staff did a great job providing a map.

Commissioner Seebeck suggested that boats and campers not be allowed to park in the guest parking lot.

Perry Bigelow agreed that they would not allow recreational vehicles to be parked on the guest parking lot.

Chair Bishop mentioned that the main issues have been addressed by Mr. Bigelow. He stated that he has toured several similar developments and are good designs.

Commissioner DeSoto stated that the proposal is an attractive project. He mentioned that he recognized the neighbor's concerns but felt the issues have been addressed.

MOTION: Upon a motion made by Commissioner Taylor and a second by Commissioner Seebeck, the Commission voted six (6) for and none (0) opposed, to recommend the base zoning for ZC-08-09 continued on the approval of safeguards and design standards proposed in the PDD that would assure compatibility of the living courts with the surrounding SF-4.5 lots and that the PDD overlay zoning district is approved. The motion carried unanimously. Commissioner Bryan was absent for the vote.

15. PDD-08-04. Continue the public hearing and consider a request by Bigelow Homes San Marcos Development, LLC to amend a Planned Development Overlay Zoning District (PDD) for properties zoned SF-4.5 and properties requesting MF-12 zoning known as Block B, Lot 15; Block D, Lots 1-12 & 15; Block E, Lots 1-6; Block F, Lots 1-11; Block G, Lots 1-15, 19-22, 25, 26 & 30; Block H, Lots 1-15; Block I, Lots 1-17; Block J, Lots 1-22; and Block K, Lots 1-10 of Section One of the Blanco River Village Subdivision.

Cecil Pennington advised the Commission that staff has identified issues of formatting in the document which will be addressed in the next week. He mentioned that the applicant has made an effort to address all concerns. Unless issues arise from further review of the proposal, staff recommended approval of the PDD proposed amendments.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

Commissioner Seebeck inquired the process of maintaining the 20% rental cap if someone needs to move out and sell or lease the home.

Bob Burton, Attorney, 100 Congress Ave, Suite 1300, Austin Texas, explained the provisions and due process for a hardship permit which last one year. If the homeowner needs additional time, they would reapply for a hardship. He pointed out that a declaration is included in the Code, Covenants and Restrictions and not imposed on the Homeowner's Association.

MOTION: Upon a motion made by Commissioner Thomason and a second by Commissioner Seebeck, the Commission voted six (6) for and zero (0) opposed, to approve the request. The motion carried. Commissioner Bryan was absent for the vote.

16. Planning Issues.

Hold a public hearing and consider recommendations to the Downtown Master Plan.

Chance Sparks gave a power point presentation and summarized the process of the Downtown Master Plan.

Chair Bishop opened the public hearing. There were no citizen comments and the public hearing was closed.

Commissioner Shy stated that he has been well versed on the Downtown Master Plan and said he was in support of the Downtown Master Plan.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted six (6) for and zero (0) opposed, to recommend to City Council the approval of the Downtown Master Plan. The motion carried unanimously. Commissioner Bryan was absent for the vote.

17. Discussion Items:

Planning Director's Report

Cecil Pennington advised the Commission that three new members have been appointed. Allen Shy, Cecil Pounds and Jim Stark have been appointed for the unexpired terms and will draw for the terms that they will fill.

Cecil Pennington announced that Chance Sparks has achieved the certification of AICP.

Commissioners' Report

Chair Bishop provided the Commission with information regarding Robert's Rule of Order. The procedure for "call the question" was discussed and Cecil Pennington suggested a workshop be scheduled to discuss Robert's Rule of Order. The Commission agreed by consensus.

Chair Bishop suggested that when a Commissioner asked someone a question and the question has been answered to please advise them that the question has been answered.

Cecil Pennington mentioned that we are currently ahead of last year single family permits.

Chair Bishop inquired on a get together event for the three outgoing Commissioner's.

18. Consider approval of the minutes from the Regular Meeting of August 26, 2008.

MOTION: Upon a motion made by Commissioner Seebeck and a second by Commissioner Thomason, the Commission voted five (5) for, none (0) opposed, and (1) abstained, to approve the Regular Meeting Minutes of August 12, 2008 with corrections. The motion carried unanimously. Commissioner Bryan was absent for the vote.

19. Questions and answers from the Press and Public.

There were no questions.

20. Adjournment

MOTION: Upon a motion made by Commissioner Thomason and second by Commissioner Taylor, the Commission voted six (6) for and none (0) opposed, to adjourn the regular meeting of the Planning and Zoning Commission at 9:30 p.m. on Tuesday, September 9, 2008. The motion carried unanimously. Commissioner Bryan was absent for the vote.

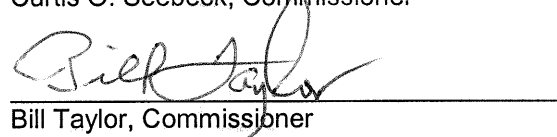

Sherwood Bishop, Chair


Bill DeSoto, Commissioner


Ryan Thomason, Commissioner


Curtis O. Seebeck, Commissioner


Randy Bryan, Commissioner


Bill Taylor, Commissioner


Allen Shy, Commissioner

ATTEST:


Francis Serna, Recording Secretary